

CP:E:EO:T:3

NOV 21 1986

Employer Identification Number: [REDACTED]  
Key District: Western (Los Angeles, CA)  
Form: 1120  
Tax Years: All Years

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

We make our ruling for the following reason(s):

You are not organized exclusively for exempt purposes. You are not operated exclusively for exempt purposes. You are operated for the benefit of private individuals and you have not established that you will not serve such private interests more than incidentally. Your income inures to the benefit of private individuals. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

Donors may not deduct contributions to your organization under section 170 of the Code.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the

[REDACTED]

date that we mailed this ruling to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. The filing of a declaratory judgment suit under section 7428 does not stay the processing of income tax returns and assessment of any taxes.

In accordance with section 6104(c) of the Code, we will notify the appropriate State officials of this action.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director.

Sincerely,

(Signature) [REDACTED]

[REDACTED]  
Director, Exempt Organizations  
Division

cc: DD, Western (Los Angeles, CA)  
Attn: EO Group

*CP 6000  
file  
11-5-86*

CP:E:EO:T:3

FEB -6 1996

Employer Identification Number: [REDACTED]  
Key District: Western (Los Angeles, CA)

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code

The information submitted indicates that you were formed on [REDACTED] in the State of [REDACTED]. Section 2 of your Articles of Association states that you are "generally organized for religious, charitable, educational, literary, and scientific research purposes, and is a non profit organization."

Specifically, Section 2(A)(6) of your First Amended Articles of Association states, in part, that one of the specific purposes of the church is: "to abstain from the activities that place the organization in a revenue taxable activity that the sole support must come from voluntary donations from voluntary employment under the provision associated with an agent of the Order and a Letter of Direction with proper delegation of authority. Other donations may come from outside of the membership through free will offerings, grants, and gifts, from friends of the Church". A Letter of Direction is issued by you accompanied with a Form W-9 (Request for Taxpayer Identification Number and Certification) for direct payment to you.

You state that you operate a church. You conduct Sunday service and Sunday school. Raymond Albretsen is the minister with a congregation of approximately 20 persons. Services are open to the public. The Holy Bible is used as your written creed and formal code of doctrine.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for religious, educational, charitable or other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501

refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 76-323, 1976-2 C.B. 18, held a member of a church group or religious order directed by superiors to secure outside employment and to turn over all remuneration received, must include in gross income the entire remuneration received since the member was not acting as an agent of the church or religious order but was receiving compensation on his own behalf and transferring it to the church or religious order.

Rev. Rul. 77-290, 1977-2 C.B. 26, held that where payments were made to the church or religious order, and the individual did not act as an agent of the church or order (subject to direction and control of the church in performing the work of the third party), the fact of payment did not preclude the inclusion of the remuneration received in the individual's gross income.

Although Rev. Rul. 69-266, 1969-1 C.B. 151, does not involve the inurement issue, it can be applied to deny recognition of exemption under section 501(c)(3) of the Code of an organization established for the primary purpose of reducing the Federal income tax liability of its creators. The situation to which Rev. Rul. 69-266 is applicable is where an individual takes a vow of poverty and assigns his/her assets and income to the church he/she has established, with a major portion of the income assigned used for

the benefit of the individual creators and with only a relatively small portion of the income used for charitable purposes. Although in particular circumstances the "church" may not be engaged in a commercial operation for the benefit of its creators, as was the case in Rev. Rul. 69-266, the following principle contained in Rev. Rul. 69-266 may be applied in denying recognition of exemption under section 501(c)(3): The organization is operated by its creator essentially as an attempt to reduce his personal Federal income tax liability while still enjoying the benefit of his earnings. Thus, the organization's primary function is to serve the private interests of its creator(s) rather than a public interest.

In Lucas v. Earl, 281 U.S. 111 (1930), the Supreme Court of the United States held that an assignment of compensation for personal services to another individual or entity is an ineffectual method of relieving a taxpayer of Federal income tax liability on the compensation assigned, regardless of the motivation behind the transfer. Therefore, in the usual case where an individual assigns his income to the church he has established, in an attempt to escape Federal tax liability, the income will, nevertheless, be taxed to the individual.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Both-El Ministries, Inc. v. U.S., 79-2 U.S.T.C., 9412, the United States Tax Court was asked to determine whether the organization is a religious organization exempt under section 501(c)(3) of the Code. Members donated their salaries to the organization which in turn provided the members with living expenses such as food, clothing, shelter and other benefits. The court found that the organization was not operated exclusively for religious purposes because its net earnings inured to the benefit of members, and thus, was not exempt under section 501(c)(3).

In Church of Modern Enlightenment v. Commissioner, T.C. Memo 1988-312 (July 25, 1988), the United States Tax Court held that an organization was formed for religious purposes and to operate a church. The organization's sole source of income was contributions received from its principal officer of his full salaries from outside employment. The organization's funds were used primarily

for payment of parsonage expenses and contributions. The parsonage expenses were living expenses of the principal officer and the contributions were payments of the officer's withholding taxes on salaries from outside employment. The Tax Court memorandum indicates that the organization is not exempt under section 501(c)(3) of the Code because the organization is not operated exclusively for religious purposes and that its income inures to the benefit of a private individual. See also Good Friendship Temple v. Commissioner, T.C. Memo 1988-313 9 (July 25, 1988).

In New Life Tabernacle v. Commissioner, T.C. Memo 1982-367 (1982), the United States Tax Court held that the petitioner was engaged in conducting weekly worship services, prayer services and bible study. The petitioner's income consisted of contributions from members' salaries from employment in secular jobs and income from social security. Substantially all of the funds was used for the payment of members' living expenses such as food, clothing, housing, utilities, automobile expenses and weekly allowances. The petitioner was held not to qualify for exemption under section 501(c)(3) of the Code because the petitioner's net income inures to the benefit of private individuals.

Our analysis of your case shows that while some of your activities may be that of operating a church, your members who have taken a Vow of Poverty and operate under a Letter of Direction, are engaged in nothing more than an attempt to assign income to the church and avoid liability for personal income taxes.

Further, there is no true agency relationship because the form of outside employment is left to the discretion of the members operating under the Letter of Direction. This constitutes impermissible inurement of your net income to individuals, impermissible private benefit, and operation of you for substantial non-exempt purposes. See Rev. Ruls. 69-266, 76-323, and 77-290, cited above. Further, the use of a W-9 form in such instances is wholly inappropriate where it gives the individual's employer the name of the church and its Employer Identification Number. See, Ingram v. Earl, cited above.

Based on the above, it is concluded that you are serving the private benefit of individuals, since your income inures to the private benefit of individuals. Therefore, you are not operated exclusively for one or more exempt purposes pursuant to sections 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii) of the regulations since you have a substantial non-exempt purpose of operating for the private benefit of your members. See Better Business Bureau v. U.S., supra.

Your method of operation is indistinguishable from that of the

organizations described in the Beth-El Ministries, Inc., Church of Modern Enlightenment, Good Friendship Temple, and New Life Tabernacle court cases found not to qualify for exemption under section 501(c)(3) of the Code.

Accordingly, we rule that you do not qualify for exemption under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have the right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will be final and copies will be forwarded to your key District Director. Hereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

[Redacted Signature]

[Redacted Title]  
Chief, Exempt Organizations  
Technical Branch 3

San Francisco (Los Angeles)  
Adm. Group

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